



ITU Workshop on Policy and Regulations for Newly Established Regulators in the Asia Pacific Region

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Timor Leste's Current Telecommunications Regulatory Framework



1. Decree-Law # 11/2003, and
2. Decree-Law # 12/2003.
3. Additionally, certain provisions of UNTAET 2001/15 would also be part of Timor-Leste current regulatory framework.
4. However, both Decree-Law # 11/2003 and Decree-Law # 12/2003 repeal such UNTAET regulation "...insofar as it is inconsistent with any provision of this Decree-Law".



Regulation UNTAET 15/2001



1. UNTAET passed Regulation UNTAET 15 in 2001 setting the basis for the "Establishment of an Authority for the Regulation of Telecommunications in Timor-Leste",
2. Which was later repealed by Decree-Law # 11/2003 and
3. Decree-Law # 12/2003 *"insofar as it is inconsistent with any provision of this Decree-Law"*.



Regulation UNTAET 15/2001



Although Regulation UNTAET 2001/15 -which regulatory experts would have labeled as Timor-Leste's National Telecommunications Act- put in place a relatively modern regulatory framework, it did not develop several key regulatory elements, particularly in the field of interconnection and convergence that are considered critical by international best practice to support a competitive market.



The Current Telecom Framework and the Regulatory Authority



1. On July 29, 2003 GoTL established the bases for the Telecommunications Sector with Decree-Law #11/2003 and also formally establishing the CRA with Decree-Law #12/2003.
2. While generally reflecting good regulatory practice in many fields, the current Telecom Laws fall short in many areas such as licensing, universal service obligations, tariffs, spectrum, media, and numbering, among others.
3. In addition, the Telecom laws were passed after the Concession was granted and, to a certain degree, seem to be adapted to the monopoly market conditions reigning as from that date. Undoubtedly, the Telecom Laws are geared towards a monopoly directly referring to the Concession holder in several clauses and failing to protect consumers, prevent anti-competitive practices and propose safeguards to create effective competition.
4. In addition, the Telecom laws granted ARCOM limited enforcement capabilities. Presently, ARCOM remains technically and financially dependent on the Line Ministry with limited decision making autonomy and is yet to mount its organizational structure as mandated by the CRA Law.



an example



Section 12 of Decree-Law 11/2003, “establishes that all public telecommunication service is provided under an exclusivity regime by the universal service operator, being governed by a concession contract to be entered into with the State”.



ARCOM Responsibilities, Section 6 Decree Law 12/2003



1. ARCOM's responsibilities are:

- a) To assist the Government, at the request of the latter or on **its own initiative**, in defining strategic guidelines and general policies for the communications sector and the activity by **communications operators**, as well as in issuing opinions and **drafting legislation in the field of communications**;
- b) To ensure the regulation and **supervision of the communications sector**;
- c) To ensure the management of the **electromagnetic spectrum**, involving the planning and apportionment of spectral resources and the supervision thereof, as well as to ensure co-ordination between civilian and military communications;
- d) To ensure the fulfillment of obligations inherent in the universal communications service;
- e) To grant communications operators access to the networks, in conditions of transparency and equality, under the terms as established by law;
- f) **To promote** competitiveness and **development** in the **communications market**, notably within the context of the **convergence of communications, of the media and of the information technologies**;
- g) To co-ordinate the application of the competition law in the communications sector with the competent entity;



ARCOM Responsibilities, Section 6 Decree Law 12/2003



- h) **To protect consumer interests**, especially those of users of the universal service, in conjunction with the relevant entities, promoting, namely, **consumer awareness**, ensuring the dissemination of information regarding the public use of communications;
- i) Grant titles for the exercise of the postal and telecommunications activity;
- j) **To conduct compliance evaluation of equipment and materials**, as well as to define **their trading requirements**;
- k) To promote technical normalization within the communications sector and related areas, in consultation with other organizations;
- l) **To promote public consultation and expression of interest procedures, notably in the area of introduction of new services or technologies**;
- m) To ensure the application of and compliance with the applicable laws, regulations and technical requirements within the remit of its responsibilities, as well as compliance, on the part of the communications operators, with the provisions of their respective licensing titles for the exercise of the activity or concession contracts;
- n) To participate in the overall development strategy for the communications sector, namely within the context of convergence of telecommunications, of the media and of the information technologies;
- o) **To collaborate in the definition of a civil emergency planning policy for the communications sector**;
- p) **To arbitrate and settle disputes arising in the area of communications, under the terms as established by law**;



ARCOM Responsibilities, Section 6 Decree Law 12/2003



- q) To ensure the technical representation of the Timorese State in similar international organizations, unless otherwise determined;
- r) To ensure the conduction of studies in the area of postal communications and telecommunications, as well as the execution of projects aimed to expand public access to information and knowledge, namely where these involve introducing advanced networks and services, reducing regional asymmetries, adopting measures applicable to citizens with special needs, either directly or in the form of support to public or private entities;
- s) To perform such other functions as may be entrusted to it by law.



ARCOM Responsibilities, Section 6 Decree Law 12/2003



2. It also incumbent upon ARCOM:
- a) To collaborate with **other public or private entities** in promoting scientific research applied to communications, as well as in publicizing the sector nationally and internationally;
 - b) To keep **abreast of the activity by related regulatory entities and foreign experience in communications regulation** and to establish relations with other regulatory entities, as well as with international organizations, at the technical level;
 - c) To publicize the applicable regulatory framework and its competencies and initiatives, as well as the rights and obligations of communications operators and users;
 - d) To provide **technical assistance to bodies and services entrusted with monitoring** the process of establishing and managing the integrated emergency communications network.



New ARCOM



Key matters on which decision are required straightening ARCOM as part of the telecom legal and regulatory



Telecom legal and regulatory framework



- ❑ A telecom legal and regulatory framework has five main components:
 - ❖ policy (new policy under work)
 - ❖ primary legislation (new required)
 - ❖ secondary legislation (ITU has done work in Timor-Leste)
 - ❖ line ministry (Ministry of Infrastructure)
 - ❖ sector regulator (New ARCOM)
- ❑ All components have to function properly for successful reform
- ❑ These slide focus on strengthening ARCOM



Overview of strengthening ARCOM



- ❖ Legal status, independence
- ❖ Regulatory structure
- ❖ Administrative structure
- ❖ Mandate
- ❖ Enforcement powers
- ❖ Financing
- ❖ Functionality, capacity, expertise
- ❖ Processes
- ❖ Reporting, supervision
- ❖ Overall credibility is crucial, will be a sum of all above



Legal status, Independence



ARCOM today

- In theory independent of the Ministry
- In practice part of the Ministry
- Present situation is possibly conflicting with legislation

For New ARCOM:

- ❖ Best practice: separate policy making and regulation
 - ❖ Ministry can give general (policy) guidelines to regulator but not specific instruction on cases
 - ❖ Independence to be clarified in legislation
- ❖ Best practice: define separation in legislation
- ❖ Best practice: insure implementation of separation



Regulatory structure



Options for New ARCOM:

- Close to single sector regulator, present scope, telecoms and post
- Converged regulator, all communications (also broadcasting and internet contents)
- Part of multi-sector regulator (also e.g. power transport, etc, possibly under different ministries, reduce cost)

Recommendation:

- one step at a time: continue now with present sectors so that telecoms sector reform can take place
- Study other alternatives in parallel
- Change later if desired
- Converged/multi sector takes time

Note: ARCOM is the first telecom regulator in Timor Leste

- Will be model for other operators to be established
- Which body should decide on regulatory structure?



Administrative structure



Options for decision making body

- Collegial body (part-time board/ commission/council)
- One-person regulator, fixed term or until further notice?
- Full-time management team as decision maker
- ARCOM will be a model for future regulators

Today management team in theory

- Management not appointed
- De factor one-person regulator

Options: if Board, will the CEO be a Board member or not?

- In an independent body, separating Board and CEO creates supervision function
- Part-time Board is necessarily less informed

Options: Who nominates decision makes and how?

Options: Who appoints the CEO?

Recommendation: Ensure implementation



Mandate of ARCOM



Best Practice: the mandate is specified in primary legislation

- See ITU papers on functions
- Options: all regulation functions to ARCOM, or some stay with Ministry?

Best practice: intervene only when necessary, let markets work

Best practice: include competition and consumer protection until separate entities set up

Best practice: define interfaces to other bodies in legislation

- Division of task policy maker <-> regulator
- Interface to composition body and consumer practice when set up



Financing



Options: Two main financing sources:

- Fees etc.; and
- Budget appropriations, at least for initial financing

Best practice: fees generally better, budget appropriations can be used for political control

- If operators create problems they pay higher fees



Functionality, capacity, expertise



- Option: a small country have a very large regulator or too many sector regulators; many different options exists

Best practice: staff quality before quantity, multi-skilled staff required

Best practice: Remuneration should be competitive with private sector

Best practice: ensure functionality from the outset

- Option: at start, in-country expert manager(s) for x years, possibly paid from donor funding

Best practice: sufficient funds for outsourcing and external expertise, including equal expertise for court cases

Recommendation: twinning with other regulator



Processes



Best practice: processes are defined internally and published

- options for how to define each process
- process for making regulations
- Process for transparency
 - public availability of procedures, document etc.
 - public consultations of various levels (internet site)
- Information, statistics, reports, regular publications
- Dispute resolution
 - official
 - Alternative Dispute Resolution, unofficial
- Rural Fund
 - separate fees for fund



Enforcement powers



Best practice: primary legislations should include sufficient enforcement powers

Best practice sufficient penalties to ensure respect for law and order

- “tip” level fines are not sufficient
- Fines proportional to gross revenue (10% has been used as ceiling)
- Include repeated/ daily fines until breach corrected

Best practice: penalties should be realistic

- e.g. suspension of major service or revoking major license is theoretical, “close the GSM network” cannot be done

Best practice: include a range of penalties

Recommendations: penalty range and scale requires co-ordination with local legislation penalty range and scale



Reporting, supervision



Best practice: reporting, but to who? (options)

- Line ministry (if one ministry covers al regulated sectors)
- PM's office or parliament (if multi-sector)
- others

Best practice: annual report, list of content in legislation, public

Best practice: auditing

Best practice: external review of the regulator every x year

Best practice: appeals of decision to courts

Best practice: a key part of supervision is transparency, then the sector can monitor the functions of the regulator

Separating CEO and Board may work as supervision function



Relation between policy and regulation



Policy,
strategy,
objectives,
Bills

Legislation

Regulation,
licences

Operators

Vendors



Ministry of
Infrastructure

Parliament

Regulator
ARCOM

Now Timor
Telecom

Ericsson,
Cisco,
Nokia, ...



Impact on the Ministry of Infrastructure



- ❖ An independent regulator means separation of policy making and regulation
 - ❖ telecom operation already separated from Ministry tasks
 - ❖ new ARCOM will not be part of the Ministry
- ❖ Policy is essentially future looking
 - ❖ what happens in the world in the sector?
 - ❖ how can Timor-Leste benefit from that development?
 - ❖ how to implement the desired development?
- ❖ Key trends
 - ❖ from monopoly to competition
 - ❖ from government to private ownership
 - ❖ from separate telephony, internet and broadcasting to convergence
 - ❖ competition legislation and consumer protection are increasingly important
- ❖ Policy making function requires different skills
 - ❖ legal
 - ❖ commercial
 - ❖ technical
 - ❖ Other
- ❖ All skills will require strengthening in the Ministry when separating policy and regulation



Key telecom tasks of the Ministry



□ Key policies (not exhaustive)

- telecommunications liberalisation (on-going, urgent)
- division of tasks between policy and regulation
- rural telecommunications
- convergence of telecoms, internet and broadcasting
- internet criminality prevention
- promote internet utilisation in TL
- e-commerce related matters
- international optical fibre connection
- radio spectrum policy, e.g. balance between broadcasting and mobile
- later on merging telecoms and broadcasting regulators
- agreement on internet national interconnection exchange (ICX)

• Key legislation (not exhaustive)

- primary telecommunications legislation including radio spectrum (urgent)
- secondary telecommunications legislation (ITU has done much)
- internet criminality prevention legislation, primary / secondary
- e-commerce related legislation, primary / secondary
- later on merge telecoms and broadcasting legislation (e.g. TV over internet)

• Other tasks

- monitor sector development
- research and publications creating public discussions and steering the development

• Implementation in phases over the years



How to strengthen the Ministry?



- ❑ Define desired structure of Ministry when telecom regulation is separate
 - ❖ separate policy and preparation of legislation from operative tasks?
 - ❖ create a separate ICT policy unit?

- ❑ Define which areas require strengthening
 - ❖ internet (many aspects, see previous slide)
 - ❖ efficient regulation
 - ❖ convergence
 - ❖ rural service provision
 - ❖ contents

- ❑ This matter requires substantial discussions
 - ❖ proposals for strengthening only after discussions



What we need?

12/4/2009

"Nha Trang, 8-9 Dec 2009"

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Policy Principles Underlying New Communications Law



- ❑ New Legal Framework is integral part of overall reform objectives
 - ❖ Achieve modernization and rapid expansion of telecommunications networks and services
 - ❖ Integrate Timor-Leste into the current Internet-based economy
 - ❖ Promote fair competition and private investment in the telecom sector
 - ❖ Encourage the development of infrastructure that increases rural and remote access to telecom services
 - ❖ Enhance national economic and social development
 - ❖ Improve conditions relating to quality of service and cost of service



New Law: Main Features



- Enabling Framework for Investment & Service Provision
 - ❖ “Light” regulation
 - ❖ Multi-operator Environment
 - ❖ Services Oriented
 - ❖ Technology Neutral
 - ❖ Fair Competition
 - ❖ Consumer Protection
 - ❖ Independent regulatory institution
 - ❖ Authorization regime that facilitates new entry
 - ❖ Convergence / “Future-proof”
 - ❖ Universal Service
 - ❖ Transition from current regime



New Law: Indicative Structure



- Chapter 1 – General Provisions
- Chapter 2 – Institutional Arrangements: Establish Authority
- Chapter 3 – Authority Functions and Powers, Autonomy
- Chapter 4 – Financing of Authority
- Chapter 5 – Decisions of Authority and Appeal
- Chapter 6 – Authorizations
- Chapter 7 – Competition
- Chapter 8 – Interconnection, Access & Infrastructure Sharing
- Chapter 9 – Tariff Regulation
- Chapter 10 – Numbering Plan and Assignment
- Chapter 11 – Access to Property
- Chapter 12 – Spectrum
- Chapter 13 – Terminal Equipment
- Chapter 14 – Universal Service
- Chapter 15 – Consumer/User Protection, Privacy and Directories
- Chapter 16 – Settlement of Disputes
- Chapter 17 – Offences
- Chapter 18 – General Broadcasting and Internet Regulations
- Chapter 19 – Final & Transition Provisions



Network Information's By September 2009



- Mobile: 250.0000 subscribers
 - Penetration: 25%
- Fixed Line: 3,0000 Subscribers
 - Penetration: 0.3%
- Internet
 - ADSL
 - Broadband
- Total Area Covered: 70%
- Total Area Populations: 81%



Challenges



- ❑ **Regulation Framework**
 - ❑ Spectrum Frequency Management
 - ❖ Spectrum Management Policy
 - ❖ Frequency Licensing Regulation
 - ❖ Frequency Pricing Regulation
 - ❖ Frequency Fines Regulation
 - ❖ Frequency Amateur Service Regulation
 - ❖ Technical Standards Regulation
 - ❑ Carrier and Service Provider
 - ❑ Broadcasting
 - ❑ Class License and Apparatus License
 - ❑ **Networks Service Licensing**
- ❑ **Budget**
- ❑ **Human Resources**
 - ❑ Addressing opportunities for ARCOM to step up its powers/ regulatory activity/ resources and technical capacity



HELP US TO GROW UP!



Thank you